

**THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In Re: SCOTT VINCENT VAN DYKE Debtor(s)	§ § § § § §	Case No. 21-60052-CML Chapter 7
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**JOINT MOTION TO FOR AN ORDER CONDITIONALLY MODIFYING THE
AUTOMATIC STAY TO PERMIT CERTAIN PROBATE PROCEEDINGS
TO CONTINUE**

This is a motion for relief from the automatic stay. If it is granted, the movants may act outside of the bankruptcy process. If you do not want the stay lifted, immediately contact the moving party to settle. If you cannot settle, you must file a response and send a copy to the moving party at least 7 days before the hearing. If you cannot settle, you must attend the hearing. Evidence may be offered at the hearing and the court may rule.

Represented parties should act through their attorney. A hearing has been set on this matter on Tuesday, June 7, 2022, at 10:00 a.m. (prevailing central time). Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting code "JudgeLopez" in the GoToMeeting app or click the link on Judge Lopez's home page on the Southern District of Texas website.

**TO THE HONORABLE CHRISTOPHER M. LOPEZ,
UNITED STATES BANKRUPTCY JUDGE:**

Now Come Catherine Curtis, Chapter 7 Trustee for the Estate of Scott Van Dyke, and Mary Katherine Alonso, a party in interest, and file the Joint Motion for an Order Conditionally Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 to Permit Certain Probate Proceedings to Continue, and would show the Court as follows:

**I.
PRELIMINARY STATEMENT**

1. On May 25, 2021 (the “Petition Date”), Scott VanDyke (herein the “Debtor”) filed a voluntary Chapter 11 Petition [Dkt #1] that has since been converted to a Chapter 7 case [Dkt #129], (the “Bankruptcy Case”) with Catherine Curtis being appointing and qualifying and is now acting as the Chapter 7 case Trustee (herein “Trustee”). The Court has jurisdiction over this Motion under 28 U.S.C. § 1334, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

A. The Death of Debtors’ Mother

2. Beyond 180 days from the Petition Date, and on or about December 6, 2021, the Debtor’s and Alonso’s Mother Mary Theresa Connelly VanDyke died and probate of her estate has been opened in Harris County, Texas, Docket No. 501470 (the “Probate Estate”).

B. Alonso As the Proposed Independent Administrator

3. The Debtor’s sisters, including Mary Katherine Alonso, are heirs to the estate and Alonso has filed her First Amended Application For Probate of Will (the “Application”), a true and accurate copy of which is attached hereto as Exhibit “1”. Alonso seeks the appointment as the Independent Administrator of the Probate Estate and seeks letters of administration confirming her power and authority.

4. The Debtor has applied for appointment as the Independent Executor under and pursuant to a Durable Power of Attorney and Living Will set out in the Application. In response, as set out in the Application filed by Alonso, are a series of claims made by Alonso that the Debtor has breached his fiduciary duty to his mother, to the Probate Estate, and to the family members and is unqualified to serve in a fiduciary capacity to the Probate Estate.

C. Probate Court Jurisdiction and the Automatic Stay

5. The probate court has jurisdiction over Probate Estate property and the handling of the Probate Estate's property, subject in part to the application of the automatic stay arising upon the Debtor's filing of his Bankruptcy Case, as well as the rights of the Bankruptcy Trustee to property of the Bankruptcy Estate. Likewise, the Probate Court has exclusive jurisdiction to administer the Probate Estate but desires that the Trustee and Alonso obtain modification of the automatic stay to allow the determination of all issues of probate and the right and entitlement of probate-related parties, to be determined by the Probate Court. Issues as to whether certain assets are property of the Bankruptcy Estate will remain in the exclusive jurisdiction of the Bankruptcy Court.

D. The Parties' Desire To Proceed in the Probate Court Subject to Conditions

6. Alonso seeks to modify the automatic stay which may be applicable to all proceedings by the parties in the Probate Court and to allow her to proceed in the Probate Court and to preserve all rights and claims to any interest of the Debtor in and to the Probate Estate, Probate Estate Property, or liability to the Probate Estate, subject to the conditions of the proposed Agreed Order Modifying the Stay agreed to by the Trustee and Alonso and filed with this Motion, subject to the Bankruptcy Court's exclusive jurisdiction over property of the Bankruptcy Estate.

7. The Trustee also seeks by this motion to preserve all claims of the Chapter 7 Bankruptcy Estate against the Debtor or against any assets of the Estate that may comprise, in whole or in part, property of the Estate in the Bankruptcy Case, particularly in the event it is shown that the Debtor is liable to the Chapter 7 Estate through mishandling or defalcation while acting on behalf of his mother or her property and while the Debtor was also acting as a Debtor in Possession and Debtor in the pending Bankruptcy Cases. The Trustee also seeks to preserve all

claims, if any, against the Debtor for any avoidance or other actions or rights the Trustee may have to recover from the Debtor or for the Debtor's conduct or misconduct or defalcation occurring within two years of the filing of the Bankruptcy Cases.

E The Debtor's Estate Interest and Possession of Estate Property

8. The Debtor has an interest in the Probate Estate as an heir. On information and belief, the Debtor likewise had and should have significant assets of the Probate Estate or proceeds from his unauthorized sale of Probate Estate assets or opportunities of the Probate Estate, all of which Alonso will seek to have sequestered or made subject to a Probate Court mandatory injunction prohibiting the Debtor from hiding or secreting those assets, pending resolution of the Estate's interest and the Probate Court orders protecting the Probate Estate and remaining assets.

**II.
RELIEF REQUESTED**

9. Both the Trustee and Alonso seek to reach a resolution of claims of both the Probate Estate and Bankruptcy Estate as to assets either held by or owned by the Debtor and to seek a prompt liquidation of such assets utilizing the appropriate tribunal. To that end, both the Trustee and Alonso seek an order of this Court modifying the automatic stay, to the extent the stay is applicable, allowing the Probate Court, and all parties to pursue their rights and obtain any and all remedies and relief available in the Probate proceeding of the Probate Estate against: (i) the Debtor or the Debtor's rights or interest in the Probate Estate or the Probate Estate's property; or (ii) the Debtor's liability to the Probate Estate or to Alonso or to the Bankruptcy Trustee, to the extent that the Debtor is found to have any interest, tangible or intangible, in any of the Probate Estate's property.

10. Both the Trustee and Alonso further agree, however, that the disposition of any interest, if any, found to belong to the Debtor in or to the Probate Estate or in or to any Probate

Estate Property, and to the extent the Trustee makes a claim thereto, shall be fully preserved to determination by the Bankruptcy Court as between the Bankruptcy Estate and any adverse or competing claim of Alonso to such interests of the Debtor. The Trustee and Alonso further agree that this determination of competing interest shall be promptly brought by the Trustee in, and determined exclusively by, the United States Bankruptcy Court.

11. The parties incorporate herein the terms of the proposed order submitted with this Motion.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form as filed with this Motion, (a) granting the Motion granting the Joint Motion to Modify the Automatic Stay, (b) conditionally lift the stay to allow the probate court to proceed to determine the rights and interests of the Debtor, and (c) specifically reserving to the Trustee and this Bankruptcy estate the determination of the rights of parties as to any interests of the Debtor determined in the Estate, and as between Alonso, the Trustee and the Debtor.

Dated: May 6, 2022

Respectfully submitted,

/s/ Shelby A. Jordan

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Attorney for Catherin Stone Curtis, Chapter
7 Trustee

CERTIFICATE OF CONFERENCE

On May 4, 2022, an effort was made to confer with Susan Tran, Chapter 7 Debtor's counsel. Ms. Tran was not available until May 8, 2022. Accordingly, this Motion is considered Opposed.

/s/ Shelby A. Jordan

Shelby A. Jordan

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2022, a true and correct copy of the foregoing Motion for Relief From Stay was served to the parties on the attached service list by United States mail, first class, postage prepaid or via CM/ECF to all parties who are authorized to receive electronic notice in this case.

/s/ Shelby A. Jordan

Shelby A. Jordan

Label Matrix for local noticing
0541-6
Case 21-60052
Southern District of Texas
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Tue May 3 13:23:19 CDT 2022

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

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(u)Eva S. Engelhart, in Capacity as Chapter 7

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